Filed 5/3/10 P. v. Perez CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>BENIGNO MADRID PEREZ,<br><br>Defendant and Appellant. | 2d Crim. No. B212309<br>(Super. Ct. No. 2008003922)<br>(Ventura County) |

Benigno Madrid Perez appeals the judgment entered after a jury convicted him of robbery (Pen. Code,[1] § 211), inflicting corporal injury on a spouse (§ 273.5, subd. (a)), dissuading a witness by force or threat (§ 136.1, subd. (c)(1)), resisting an executive officer (§ 69), misdemeanor battery (§ 242), and misdemeanor vandalism (§ 594, subd. (b)(2)(A)). Following his conviction, appellant admitting serving a prior prison term (§ 667.5, subd. (b)). The trial court sentenced him to a total term of six years eight months in state prison. He contends (1) the evidence is insufficient to sustain his robbery conviction; (2) the court erred in failing to give a unanimity instruction as to the robbery charge; (3) the court violated its sua sponte duty to instruct on misdemeanor resisting a peace officer (§ 148) as a lesser included offense of resisting an executive officer; (4) the court abused its discretion in admitting evidence of his gang affiliation; (5) the evidence

[1] All further undesignated statutory references are to the Penal Code.

is insufficient to support his conviction for vandalism; (6) the court abused its discretion in allowing the prosecution to amend the information; and (7) he was sentenced to both robbery and inflicting corporal injury on a spouse, in violation of section 654. We shall order the abstract of judgment amended to reflect a $20 court security fee as to each count pursuant to section 1465.8, subdivision (a)(1), and a concurrent 12-month term on count 6. In all other respects, we affirm.

## STATEMENT OF FACTS

### *The Instant Offenses*

On the night of January 30, 2008, appellant "[ran] up a bar tab" at the Sea Rounders Bar in Oxnard. At about 8:30 p.m., he gave bar employee Agnes Buck an H & R Block credit card to pay the tab. After Buck notified appellant that she was unable to process a credit transaction with the card, appellant called his wife, Vanessa Perez, and asked her to bring him money.

Vanessa[2] arrived just as appellant and Buck were returning from a nearby gas station, where Buck had unsuccessfully tried to withdraw money from an ATM. Appellant told Buck that Vanessa was his ex-girlfriend. Buck testified that Vanessa yelled at appellant and they started arguing. According to Buck, appellant slammed his hands on the hood of Vanessa's car and kicked the side of the door, but never touched Vanessa.

After Vanessa left, appellant paid the tab with money she had given him and had two more drinks. He told Buck he would be back, then left in a taxi.

Vanessa testified that she arrived at the bar with a friend a couple of hours after appellant called her. Later, Vanessa returned to the bar with a friend. According to Vanessa, she never got out of the car. Instead, she handed appellant a credit card, which he returned to her after he paid the tab. She acknowledged arguing with appellant because she did not want to give him money for alcohol, but denied that he ever hit or kicked the car.

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[2] We refer to Vanessa by her first name because she shares appellant's surname. We intend no disrespect.

Sometime after 8:00 p.m., appellant arrived at his apartment in Oxnard. Vanessa, her mother Christina Carrillo, and her brother Zachary H. were in the apartment. Carrillo went to the front door and prevented appellant from entering because Vanessa told her he had been drinking and that she did not want him there. When appellant attempted to use his key, Carrillo locked the door. Appellant yelled at Carrillo "to open the door or he was going to fuck [her] up." Carrillo feared for Vanessa's and her own safety. Vanessa, however, had changed her mind and was yelling at Carrillo to let appellant in.

At that point, appellant kicked or broke through the door. Carrillo called 911 on her cell phone. Appellant grabbed the phone and broke it, then punched Carrillo in the head with his fist. When Vanessa tried to help Carrillo, appellant punched Vanessa in the face and head. Appellant then grabbed Zachary, threw him aside, and walked toward the bedroom he shared with Vanessa. When Vanessa tried to stop him from removing her wallet from her purse, he hit her again.

Carrillo went to another telephone and called 911 again. When appellant saw Carrillo talking on the phone, he pushed her into the refrigerator then kicked her as she lay on the floor. Appellant left in a waiting taxi.

Oxnard Police Officer James Crilly responded to Carrillo's 911 call. When the officer entered the apartment, he noticed the door jamb was broken and was told that appellant had caused the damage when he forced his way in. Vanessa appeared to have been crying and was very upset. Her nose was swollen and bruised, and one of her eye sockets was slightly blackened. Her left shoulder was also bruised. Carrillo also appeared disheveled and upset and had swelling on the left side of her head near her ear and bruising to her shoulder. Zachary had scratch marks on his right forearm and appeared to be traumatized. The officer also found pieces of a broken telephone.

Officer Crilly conducted taped interviews of Vanessa, Carrillo, and Zachary. In Vanessa's taped interview, which was played for the jury, she said that appellant had threatened them before he broke down the door and punched Carrillo as soon as he entered the apartment. She also said that appellant hit Carrillo in the face and

head and broke her cell phone when she told him she was calling the police. When Vanessa intervened in order to help her mother, appellant punched her in the nose and caused her to fall to the ground. Appellant hit her again when she tried to stop him from taking her wallet. Vanessa saw appellant shove Carrillo through the living room doorway and into the kitchen, causing her to hit the refrigerator and fall to the ground. The statements given by Carrillo and Zachary were consistent with Vanessa's account of the incident. Her testimony at trial, however, was quite to the contrary.[3]

After appellant left the apartment, he returned to the Sea Rounders Bar and spoke with Buck. Appellant was "edgy" and had scratch marks on his face and arm. He told Buck that he had gone to his house and had to break down the door because they would not let him in. He also said that he had punched his ex-girlfriend and her mother and that he was probably going to jail. Buck signaled to a friend to call the police. Another bar patron testified that appellant had told her something about breaking down his girlfriend's door and said he would not go back to jail and "would go out with a bang."

At about 11:00 p.m., Oxnard Police Officer Jason Graham responded to the bar and assisted in appellant's arrest. Vanessa and Carrillo had provided Officer Crilly

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**3** When Vanessa testified at trial, she was still married to appellant and did not want to testify against him. She also told Carrillo that she did not want her to testify, and was angry with her for calling the police. She denied telling Officer Crilly that appellant had demanded money and threatened them when they would not open the door to the apartment. She also denied telling Carrillo to prevent appellant from coming in because he was drinking and she was afraid he might become violent. Although she told the police that appellant had punched Carrillo as soon as he entered the apartment, at trial she claimed that appellant pushed her and hit Carrillo only after Carrillo hit *him* and threatened to call the police. She also denied telling Officer Crilly that appellant had repeatedly hit Carrillo in the face and head. According to Vanessa, she lied to the police because she was angry at appellant and most of what she told the officer was untrue. She admitted telling the police that appellant had repeatedly hit her in the face and head and that he had picked up her purse while they were in the bedroom. She claimed that she told the officer appellant had left with her wallet only because she "thought that he took it." She also claimed that she found the wallet the next day with all the money inside, although she never reported this to the police.

with a description of appellant, which the officer conveyed to Officer Graham. Appellant was described as a 210- to 220-pound Hispanic male with a shaved head and the word "Chiques" tattooed on the back of his head along with a marijuana leaf. Officer Graham was also informed that appellant said he would not go quietly if the police arrived and "would go out with a bang."

Officer Graham, along with two or three other uniformed officers, including Officer Neail Holland, walked up behind appellant as he was seated. Officer Graham told appellant to place his hands on top of his head. When appellant balled up his fists and began to stand up as if he was "getting into a fighting stance," Officer Graham grabbed him by the waist and held him in a "bear hug." Although the officer acknowledged that this manner of restraint was not consistent with his training, he believed it was reasonable under the circumstances.

Buck testified that appellant "lunged backward out of the chair" and began resisting the officers. Officer Holland saw appellant kicking at the other officers and rolling around on the ground as they attempted to handcuff him. Appellant ignored Officer Holland's commands to stop fighting and put his hands behind his back, and made every effort to keep his arms under his body. After the officers succeeded in placing the handcuffs on appellant, he spit in their direction but did not hit any of them. As he was being taken out of the bar, appellant yelled out that he went "out in a bang." Officer Holland also heard him yell out "South Side," which the officer understood to be a "common reference yelled in the city of Oxnard by gang members that belong to South Side Chiques."

*Appellant's Prior Acts of Domestic Violence*

In early April 2003, Judith Padilla and appellant had a "fling" that lasted three or four days. During that time, they watched movies, hung out, and had sexual intercourse. On the night of April 5, appellant drank about a 12-pack of beer. When Padilla told appellant that she wanted to go to her mother's house, he became angry and pushed her with both hands against a wall. Padilla asked him if she could leave, but he would not allow her to go. Appellant told her that "he would fuck her house up, fuck her

parents' house up, he would fuck her up and he would blast anybody who came to the house." After Padilla spoke to her sister on the telephone and told her something was wrong, her sister called the police. Oxnard Police Officer Mario Fender responded to Padilla's apartment and arrested appellant after Padilla told him what had happened.

In July 2001, Veronica Frazier and appellant had been involved in a romantic relationship for about five months and had been living together for about three of those months. On July 15, Frazier was with a neighbor in an alley across the street and refused appellant's command for her to come home. Appellant called her a "fucking bitch and a slut," then approached her and grabbed her by the hair and jaw. The police arrived and arrested appellant. Earlier that day, appellant had hit Frazier while they were in the car. At some point he had told her that if she "got out of the car and . . . tried to leave, that he was going to beat the shit out of" her.

## DISCUSSION

### I.

### *Sufficiency of the Evidence - Robbery*

Appellant challenges the sufficiency of the evidence supporting his robbery conviction. He claims that his taking of community property does not constitute theft and therefore cannot constitute robbery, and that the evidence is insufficient to prove he intended to permanently deprive Vanessa of her wallet, as opposed to the money contained therein. Neither claim has merit.

In reviewing claims of insufficient evidence, "'" . . . we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence - that is, evidence that is reasonable, credible, and of solid value - from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]"' [Citation.] '[W]e presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence.' [Citation.]" (*People v. Wilson* (2008) 44 Cal.4th 758, 806.)

Robbery is defined as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will,

accomplished by means of force or fear." (§ 211.) To constitute robbery, the feloniously taken property must belong to someone other than the defendant. (§ 484, subd. (a) [defining theft as the felonious taking of "the personal property of another"]; *People v. Tufunga* (1999) 21 Cal.4th 935, 946.)

Appellant's robbery conviction is based on his felonious taking of Vanessa's wallet and its contents. With exceptions that are not pertinent here, property acquired by a married person during the marriage while living in California is community property. (Fam. Code, § 760.) During the marriage, both spouses have equal interest in the community property. (*Id*. at § 751.) Courts in this state have recognized, however, that a spouse may be convicted of stealing or damaging community property. (See *People v. Llamas* (1997) 51 Cal.App.4th 1729, 1739 ["We conclude a spouse may be criminally liable for the theft of community property"]; see also *People v. Kahanic* (1987) 196 Cal.App.3d 461, 463-467 [affirming husband's conviction for vandalism of community property vehicle].) These cases were decided by analogy to the settled conclusion that a partner can be convicted of stealing partnership property. (*Llamas, supra*, at p. 1738 [discussing and citing *People v. Sobiek* (1973) 30 Cal.App.3d 458, 463-469]; *Kahanic, supra*, at pp. 464-465 [same].) Based on this authority, it was recognized that "the requirement in criminal statutes that property be that of another or not the defendant's own 'excludes criminality only when the actor-defendant is involved with property wholly his or her own.' [Citation.] . . . 'The essence of the crime is in the physical acts against the ownership interest of another, even though that ownership is less than exclusive. [Citation.] Spousal community property interests are no longer "mere expectancies," as they were for a married woman many years ago. [Citation.] Each community property owner has an equal ownership interest and, although undivided, one which the criminal law protects from unilateral nonconsensual damage or destruction by the other marital partner.' [Citation.]" (*Llamas, supra*, at pp. 1738-1739.) The court in *Llamas* further noted that "[t]here is language in *People v. Green* (1980) 27 Cal.3d 1, 50,

footnote 37,[4] which seems to suggest by negative implication that a spouse cannot steal community property. The case, however, does not so hold." (*Llamas*, *supra*, at p. 1739, fn. 3.)

Appellant urges us to reject both *Llamas* and *Kahanic* and conclude that a spouse cannot be convicted of theft based on the taking of community property. For support, he cites to the same footnote from *People v. Green*, and also refers us to cases from other jurisdictions purporting to recognize that one cannot be convicted of stealing property in which he or she has an ownership interest. (See, e.g., *State v. Rabalais* (La.App. 2000) 759 So.2d 836, 840-841; *People v. Zinke* (1990) 76 N.Y.2d 8.) He also claims he could find only one out-of-state case, *Commonwealth v. Mescall* (1991) 405 Pa. Super. 326, that is consistent with *Llamas* and *Kahanic*. We found several others, one of which appellant cited for the contrary position. (See Annot., What Is "Property of Another" Within Statute Proscribing Larceny, Theft, or Embezzlement of Property of Another (2002) A.L.R.5th 19, § 8(a), and cases cited therein.)

We decline appellant's invitation. *Llamas* and *Kahanic* are well reasoned and legally sound, and appellant provides no persuasive reason for us to reject them.

We also reject appellant's claim the evidence is insufficient to support the finding that he intended to permanently deprive Vanessa of the property he took from her. Appellant bases this claim solely on Vanessa's *wallet*, as opposed to its contents. In other words, he does not challenge the evidence proving he intended to permanently deprive Vanessa of the money he took from her wallet and subsequently spent. The evidence is plainly sufficient in that regard. With regard to the wallet, the jury could reasonably infer that appellant took it with the intention of never returning it. Although Vanessa testified at trial that appellant had not taken her wallet and that she found it the next day, the wallet was never produced and no explanation was given for its absence. Under the circumstances, the jury could infer that appellant not only intended to permanently deprive Vanessa of her wallet, but had in fact done so.

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**4** (*People v. Martinez* (1999) 20 Cal.4th 225, as stated in *People v. Morgan* (2007) 42 Cal.4th 593, 607.)

II.

*Unanimity Instruction*

Appellant asserts that the court was required to give a unanimity instruction as to the robbery charge. He claims this is so because "the prosecution argued that his robbery conviction could be based on either his taking community funds, or by his taking Vanessa's wallet (which also may have been community property) from the couple's bedroom to the hallway of their apartment." We disagree.

A unanimity instruction is required only when a conviction could be based on evidence of two or more discrete criminal acts and the prosecution does not elect to rely upon a single act. (*People v. Russo* (2001) 25 Cal.4th 1124, 1132; CALCRIM No. 3500, formerly CALJIC No. 17.01.) No instruction is required where the evidence shows either one criminal act or multiple acts in a continuous course of conduct. (*People v. Stankewitz* (1990) 51 Cal.3d 72, 100.)

Here, the evidence offered to prove that appellant committed robbery consisted of a single act, i.e., the felonious taking of Vanessa's wallet and its contents. Even if it could be said that the taking of the wallet and its contents were separate and distinct acts, they were plainly committed in a continuous course of conduct. Accordingly, no unanimity instruction was required. In any event, any error in failing to give the instruction would be harmless because the jury resolved the basic credibility dispute against appellant and therefore would have convicted him under either theory. (*People v. Thompson* (1995) 36 Cal.App.4th 843, 853.)

Appellant alternatively argues that the failure to give a unanimity instruction compels the reversal of his robbery conviction if we find in his favor on either one of his claims regarding the sufficiency of the evidence. Because we have rejected both claims, this contention is moot.

III.

*Lesser Included Offense*

Appellant contends the court erred in failing to instruct the jury on misdemeanor resisting, delaying, or obstructing a police officer (§ 148)[5] as a lesser included offense of resisting an executive officer (§ 69).[6] We disagree.

Trial courts are required to instruct sua sponte on lesser included offenses when the evidence presents a question whether all the elements of the charged offense are present, and there is evidence that would justify conviction of the lesser offense. (*People v. Breverman* (1998) 19 Cal.4th 142, 154-155.) The court is required to give such instructions only when the evidence supporting a finding on the lesser offense is substantial enough to merit the jury's consideration. (*Ibid.*)

We assume without deciding that the misdemeanor resisting offense qualifies as a lesser included offense of section 69 under the facts of this case. (See *People v. Lacefield* (2007) 157 Cal.App.4th 249, 251 [§ 148, subd. (a)(1) is a lesser included offense of § 69 where the defendant is charged under the greater offense with actually resisting an officer as opposed to an attempt to deter]; *People v. Carrasco* (2008) 163 Cal.App.4th 978, 984-986 [same]; contra, *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1532-1533; *People v. Belmares* (2003) 106 Cal.App.4th 19, 23-26, disapproved on another ground in *People v. Reed* (2006) 38 Cal.4th 1224, 1228.) We conclude however, that here the court was not obligated to instruct on the lesser offense.

The record reflects that "if appellant resisted the officers at all, he did so forcefully, thereby ensuring no reasonable jury could have concluded he violated section 148, subdivision (a)(1) but not section 69." (*People v. Carrasco, supra,* 163 Cal.App.4th

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**5** Section 148, subdivision (a)(1), provides in pertinent part that "[e]very person who willfully resists, delays, or obstructs any . . . peace officer . . . in the discharge or attempt to discharge any duty of his or her office or employment" is guilty of a misdemeanor.

**6** Section 69 provides in pertinent part that "[e]very person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer" shall be guilty of a felony.

at p. 985.) Buck testified that when the officers approached appellant he balled up his fists and began to stand up as if he was "getting into a fighting stance." When Officer Graham attempted to subdue appellant, he lunged backward out of his chair. He then proceeded to kick at the officers and roll around on the ground, and fought to keep his arms under his body so that he could not be handcuffed. Officer Holland saw appellant kicking at the officers until he ended up "rolling around" on the ground as they attempted to handcuff him. He ignored Officer Holland's commands to stop fighting and put his hands behind his back, and made every effort to keep his arms under him. After the officers succeeded in placing the handcuffs on appellant, he spit in their direction but did not hit any of them. Appellant did not offer any contrary evidence disputing this testimony. "Hence, the jury would have had no rational basis to conclude appellant wrestled with the officers for which they convicted him of resisting or delaying an officer, but the struggle did not involve force or violence; accordingly, the trial court properly instructed the jury by not instructing it with section 148, subdivision (a) as a lesser included offense." (*Id.* at p. 986.)

Appellant argues the jury may have found him guilty of misdemeanor resisting based on his failure to comply with Officer Graham's order to put his hands behind his head. He reasons that "a reasonable jury could have concluded that by the time appellant began physically resisting, the officers were using unreasonable force given the circumstances." Appellant fails to appreciate that the jury rejected this conclusion in finding him guilty of violating section 69. Moreover, the jury's finding in this regard would render any error in failing to instruct on the lesser offense harmless. (*People v. Chatman* (2006) 38 Cal.4th 344, 392.)

IV.

*Gang Evidence*

At trial, Officer Graham testified that the physical description he was given of appellant included the fact that he has a tattoo of the word "Chiques" on the back of his head. Officer Holland testified that he heard appellant yell out "South Side" as he was being led out of the bar following his arrest. Appellant contends that these references to

his gang affiliation should have been excluded under Evidence Code section 352. This claim is forfeited because it was not raised below. Appellant's trial counsel did not object to Officer Graham's testimony or to Officer Holland's testimony that he heard appellant yell "South Side." He did raise a relevancy objection to Officer Holland's testimony explaining what "South Side" meant, but that objection is insufficient to preserve his claim under Evidence Code section 352.

In any event, we need not decide whether the evidence should have been excluded because any error in its admission was harmless. The evidence was brief, and was offered for the limited purpose of proving that the officers used reasonable force in apprehending appellant. The limited nature of the evidence substantially reduced the risk that the jury would consider it for an improper purpose. (See *People v. Brown* (2003) 31 Cal.4th 518, 547.) Moreover, the evidence of appellant's guilt is strong. Under the circumstances, it is not reasonably probable that appellant would have achieved a more favorable result had the evidence of his gang affiliation been excluded. (*People v. Watson* (1956) 46 Cal.2d 818, 836; see also *People v. Harris* (2005) 37 Cal.4th 310, 336 [claims of error in applying the ordinary rules of evidence are subject to *Watson* standard of review].)

V.

*Sufficiency of the Evidence - Vandalism*

Appellant was found guilty of vandalism under section 594, subdivision (b)(2)(A), based on his act of breaking down the door to his apartment. Appellant contends the evidence is insufficient to support the conviction because the prosecution failed to prove that he acted with malice. According to appellant, the evidence essentially compels the finding that he "damaged the door with the intent of entering his apartment, rather than to vex or annoy the door's owner or to commit a wrongful act."

There is no merit in appellant's contention. His reason for breaking down the door is essentially irrelevant because vandalism is a general intent crime. In order to convict him, the prosecution had to prove that he maliciously damaged or destroyed the property of another. (§ 594, subd. (b)(2)(A).) As the jury was instructed, "Someone acts

maliciously when he intentionally does a wrongful act or when he acts with the unlawful intent to annoy or injure someone else." (CALCRIM No. 2900.) In other words, the jury had to find that appellant intentionally broke down the door knowing it was wrong to do so. (*People v. Atkins* (2001) 25 Cal.4th 76, 88.) The evidence, viewed in the light most favorable to the judgment, is plainly sufficient to support that finding.

VI.

*Amendment of Information*

The information charged appellant in count 6 with vandalism of Vanessa's cell phone. After the close of evidence and during argument, the prosecution moved to amend count 6 to allege vandalism of the door. The court granted the motion over appellant's objection. Appellant claims the court violated his due process rights by allowing the amendment. We conclude otherwise.

Section 1009 "authorizes amendment of an information at any stage of the proceedings provided the amendment does not change the offense charged in the original information to one not shown by the evidence taken at the preliminary examination." (*People v. Winters* (1990) 221 Cal.App.3d 997, 1005; *People v. Baca* (1961) 197 Cal.App.2d 362, 371.) Here, Officer Crilly testified at the preliminary hearing that appellant had damaged the door by breaking in. Although appellant argues that he would have pursued his defense differently had he known he would be charged with vandalizing of the door, the evidence presented at the preliminary hearing was sufficient to put him on notice that he was alleged to have committed that crime.[7] Indeed, the court noted that the evidence presented by the prosecution at trial (which included Officer Crilly's testimony, the statements of Vanessa and Carrillo, and a photograph depicting the damage) had led it to assume that the vandalism charge pertained to the door. Because appellant had adequate notice of the facts upon which the amendment was based, there was no due process violation. (See *Baca, supra*, at p. 371 [no error in amending

[7] Appellant complains that the amendment deprived him of the opportunity to establish at trial whether he "had any wrongful intentions at the time he broke the door in." As we have noted, appellant's motive for breaking down the door is irrelevant to the charge of vandalism.

information to conform to proof after all evidence was presented and both sides had rested].)

VII.

*Section 654*

Appellant contends he was sentenced to consecutive terms for robbery and inflicting corporal injury on a spouse in violation of section 654. He argues that "[t]he only reasonable conclusion from the evidence is that appellant's battering [of] Vanessa was done in order for him to get money from her."

Section 654, subdivision (a), provides in pertinent part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." The purpose of the statute "is to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime. Although the distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, the trial court may impose sentence for only one offense . . . ." (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1134.) "Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.]" (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) We review the court's ruling in the light most favorable to the judgment, and presume the existence of every fact the court could reasonably deduce from the evidence. (*Ibid.*)

"The test for determining whether section 654 prohibits multiple punishment has long been established: 'Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. . . .' [Citation.]" (*People v. Britt* (2004) 32 Cal.4th 944, 951- 952.) "[I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have

harbored a single intent and therefore may be punished only once. [Citation.] [¶] If, on the other hand, defendant harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.'" (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

Substantial evidence supports the court's finding that appellant's infliction of corporal injury on Vanessa "occurred at a separate time and place and was . . . transactionally related, but not factually related to" the robbery. The record reflects that appellant first began hitting Vanessa when she attempted to help Carrillo. He then went into the bedroom and struck her when he tried to take money from her purse. From this evidence, the court could conclude that appellant was pursuing two different criminal objectives: to punish Vanessa for not letting him in the apartment and protecting her mother, and to overcome her efforts to stop him from taking money out of her purse. Accordingly, the court did not violate section 654 by imposing consecutive sentences.

VIII.

*Sentencing Issues*

A.

*Count 3*

In orally pronouncing appellant's sentence for dissuading a witness in violation of section 136.1, subdivision (c)(1), (count 3), the court stated it "is ordering midterm of two years to run concurrent with Counts 1 and 2." As the People note, the minute order and abstract of judgment state that the court imposed the *low* term of two years, while the midterm under the statute is actually three years. Relying on the proposition that the oral pronouncement of judgment usually controls (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186), the People ask us to order the judgment corrected to reflect the midterm of three years for count 3.

The People's position is not aided by the rule that the oral pronouncement of judgment controls. While the court stated it was ordering the "midterm," it also orally pronounced the sentence as "two years." In other words, the inconsistency between the oral pronouncement and the abstract of judgment relates not to the sentence itself, but rather its characterization as either the lowterm or the midterm. It is therefore just as likely, if not more so, that the court intended to impose a two-year sentence but simply mislabeled it as the midterm. Because the People fail to demonstrate that the abstract of judgment incorrectly states appellant's sentence on count 3, we reject their request to order it corrected in that regard.

B.

*Court Security Fee (§ 1465.8); Count 6*

The People ask us to order the abstract of judgment corrected to reflect (1) a $20 security fee for each conviction pursuant to section 1465.8, subdivision (a)(1), and (2) a concurrent 12-month term on count 6. Appellant concedes both points. Pursuant to the version of section 1465.8 in effect when appellant was sentenced, a $20 fee must be imposed on each count of conviction.[8] Because appellant was convicted of six offenses, six $20 fees must be imposed, for a total of $120. As to count 6, the minute order incorrectly reflects a six-month sentence. The court's oral pronouncement of a 12-month sentence controls. We shall order the judgment modified accordingly.

DISPOSITION

The judgment is corrected to reflect (1) the imposition of a $20 court security fee on each count, for a total of $120, and (2) a 12-month concurrent term on count 6. The trial court shall forward a modified abstract of judgment to the Department

[8] The current version of the law, which is in effect from July 28, 2009, until July 1, 2011, raises the fee from $20 to $30. (§ 1465.8, subds. (a)(1) & (f).)

of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Charles R. McGrath, Judge

Superior Court County of Ventura

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David A. Andreasen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Chung L. Mar, Ana R. Duarte, Deputy Attorneys General, for Plaintiff and Respondent.